

Exh. A

to

**EMERGENCY MOTION PURSUANT TO
28 U.S.C. §455(a) TO RECUSE THE HON.
WILLIAM SMITH with Declaration in
Support, AND MOTION FOR STAY**

Declaration of Forensic Accountant

Robert A. McNeil

Declaration and Forensic Analysis of Evidence
by
Robert A. McNeil
on behalf of
Billie R. Schofield

Summary of Conclusions

- A. The Commissioner of IRS circumvents his conceded lack of authority to perform substitute income tax returns (SFRs) by making his records appear that he performed them.
- B. For so-called "non-filers", IRS creates the false appearance of "deficiencies" only after falsifying both its internal and external records to make it appear a substitute income tax return was executed by IRS on claimed dates, when nothing happened on those dates except criminal manipulations of IRS' related AIMS and IMF databases.
- C. The creation of pretended deficiencies simultaneously creates, by fraud, the appearance of a duty to file, thereby, providing IRS colorable authority to enforce collection/criminal prosecutions;
- D. Without deficiencies created by fraud, involving IRS software and falsified documentary evidence, there would be no willful failure to file a return, and;
- E. Since Congress cannot authorize commission of criminal acts in the enforcement of laws, I conclude that the systemic fraud I have documented herein, occurring in the records of IRS, concerning "non-filers", is clear and convincing evidence that Congress did not, in fact, impose any duty upon Americans to file income tax returns.

I, Robert A. McNeil, affirm that:

1. I am a retired Forensic Accountant/Auditor/Business Consultant, located in Hurst, Tarrant County, Texas.
2. I have more than 40 years of experience examining the books and records of companies ranging in size and scope from local vendors to domestic and international Fortune 500 corporations.
3. During the 20-year consulting phase of my career, I was retained by law firms, CPA firms, the Department of Justice, major oil and gas companies, and individuals to assist them with contract disputes, arbitrations, lawsuits, and other matters, here in America and in several foreign countries.

4. During my analysis on behalf of Mr. Schofield, I examined the following documents related to the year 2009:

Support Document 1	Department of the Treasury – Internal Revenue Service IMF MCC TRANSCRIPT SPECIFIC xxx-xx-9231 Dec. 31, 2009 SCHO 2009
Support Document 2	Department of the Treasury – Internal Revenue Service IMFOLT 2009
Support Document 3	Department of the Treasury – Internal Revenue Service Form 13496, Form 4549 and Form 886-A 2009
Support Document 4	Department of the Treasury – Internal Revenue Service Form 4340 Certificate of Assessments, Payments, and Other Matters 2009
Support Document 5	Department of the Treasury – Internal Revenue Service Form 668-B Levy – 2006-2009 2009
Support Document 6	Department of the Treasury – Internal Revenue Service FOIA Response from Klaudia Villegas, IRS Disclosure Manager September 17, 2013
Support Document 7	Department of the Treasury – Internal Revenue Service FOIA Response from Laura A. McIntyre, IRS Disclosure Manager July 6, 2016

I am aware IRS concedes that its power under 26 U.S.C. §6020(b) to perform SFRs is limited to excise, employment and partnership matters.¹

I am also aware IRS concedes 26 U.S.C. §6020(b) has no application to income taxes “because of constitutional issues”.²

¹ The authority to perform substitutes for return is discussed in the Internal Revenue Manual §5.1.11.6.7, which shows that such authority is limited to matters involving “employment, excise and partnership taxes”, and does not include the income tax. [Link here: http://www.irs.gov/irm/part5/irm_05-001-011r-cont01.html, scroll down to 5.1.11.6.7 “IRC 6020(b) Authority”.] The Privacy Impact Assessment IRS issues concerning 6020(b) precisely confirms that limitation. [Link here: http://www.irs.gov/pub/irs-pia/auto_6020b-pia.pdf]

I am further aware that, to circumvent his lack of authority, the Commissioner of IRS extensively falsifies his records to make it *appear* he executes substitute income tax returns on claimed dates, when no such thing ever happens.

Following is a brief description of the manner in which IRS feloniously manipulates its controlling software to justify prosecutions of targeted “non-filers” and thefts of their property.

The Individual Master File (IMF) software is the “authoritative data source” controlling the interactions of IRS personnel with all Americans.³

The IMF software creates, for any given American and any given tax year, an annual “module”. In the “transaction section” of an annual IMF record, IRS employees enter all relevant numerical data concerning payments, deficiencies, assessments, interest due, etc.⁴

However, the carefully controlled IMF software does not allow direct entry of data; but only “batch entry” “transactions” consisting of three-digit numeric combinations.

Every possible three digit “transaction code” is defined and described in either IRS’ “Document 6209”, <https://www.irs.gov/uac/document-6209-adp-and-idrs-information>, in IRS’ “Internal Revenue Manual”, or in IRS’ “AIMS Reference Guide”.

The Commissioner of IRS has over 100 years of experience enforcing the income tax and he is considered the “master of the subject”.⁵

² In the Revenue Officer’s Training Manual, (Unit 1, Page 23-2) [See **Exh. D, Pg. 2**] the Commissioner concedes: “The IRM restricts the broad delegation shown in figure 23-2 (6020(b))... to employment, excise and partnership tax returns because of constitutional issues”. Emphasis added.

³ **“IMF System Overview** The Individual Master File (IMF) consists of a series of runs, data records and files. The IMF receives individual tax submissions in electronic format, and processes them through a pre–posting phase, posts the transactions, analyzes the transactions, and produces output in the form of Refund Data, Notice Data, Reports, and information feeds to other entities. **IMF is the authoritative data source for individual tax account data. All the other IRS information system applications that process IMF data depend on output from this source.** IMF is a critical component of IRS’s ability to process tax returns.”

See IRS Privacy Impact Statement link here: http://www.irs.gov/pub/irs-pia/imf_pia.pdf

⁴ See **Exh. B, Support Document 1**, and review the section below the “entity”, or top portion, of an annual module maintained concerning victims.

⁵ “Congress has delegated to the [Commissioner], not to the courts, the task of prescribing all needful rules and regulations for the enforcement of the Internal Revenue Code.” National Muffler Dealers Assn., Inc. v. United States, 440 U.S. 472, 477 (1979) (citing Correll, 389 U.S. at 307 (citing 26 U.S.C. § 7805(a))). This delegation “helps guarantee that the rules will be

The “master” of the income tax requires that his software reflect evidence a return has been received from a person, or that a return was executed by IRS at the person’s election, as a necessary predicate to determining deficiency amounts due.⁶ That is, the IRS IMF software will not allow entry of “deficiency” amounts tabulated by IRS staff, unless that software first reflects the receipt of a return by IRS.

After 100+ years of practice, the Commissioner initiates his enforcement prosecution of those he labels “non-filers” by having his IRS Examinations Division enter a certain sequence of transactions into the Examination Division’s Audit Information Management System (AIMS), a database closely related to the IMF database.⁷

IRS uses the AIMS database to change IMF records, but AIMS does not have the same validation checks written into it as does the IMF.⁸

As shown below, by initializing in the AIMS software two particular transactions in sequence, IRS first causes an annual IMF tax module of a “non-filer” to reflect that IRS supposedly received a return on a claimed date when IRS didn’t, and a few days later, the module will automatically show that IRS supposedly executed a substitute income tax return on another date, when IRS didn’t.⁹

The following table summarizes the key **Transaction Codes (TCs)** involved in initiating and concealing the record falsification scheme:

written by ‘masters of the subject’ who will be responsible for putting the rules into effect.” 440 U.S., at 477 (quoting United States v. Moore, 95 U.S. 760, 763 (1877)).

⁶ If deficiency amounts COULD be entered without falsifying IRS’ IMF records, we can assume they WOULD be, yet invariably IRS performs the same sequence of falsified entries prefatory to opening an AIMS account, via which Examinations can then inject alleged deficiency amounts into the IMF record.

⁷ The AIMS data base is “used by Appeals, Examination Division and TE/GE to control returns, input assessment/adjustments to the Master File and provide management reports. And while the return is charged to Examination, the AIMS data base tracks its location, age, and status.” See IRM Part 4. Examining Process, Chapter 4, “AIMS Processing”, 4.4.1.2(05-19-2009).

⁸ “A non-master file account established on AIMS is not subject to many of the same computer checks to which a master file account is subjected.” (AIMS Reference Guide 4.4.1-1 (05-19-2009), Definition under “Non-Master File (NMF)”). [Link to the AIMS Reference Guide: http://www.irs.gov/irm/part4/irm_04-004-001.html#d0e10.]

⁹ Congress proscribed the act of falsifying government records, to reflect events which do not occur, at 18 U.S.C. §1001.

Support Document	TC	TC Description	TC Date
1, 2	424/036	Examination Request Indicator	Aug. 25, 2011
2	425/036	Return Received Date	Aug. 25, 2011
1, 2	420	Reversal of a TC 424	Aug. 25, 2011
1, 2	300	Examination of tax return	Sept. 12, 2011
		Additional tax assessed by examination	Apr. 23, 2012

The record falsification begins when an IRS Examinations Division employee begins to “build a case” against a “non-filer”.

The employee enters into the AIMS data base a transaction numbered “**424**” with a social security number and first four digits of a person’s last name, which transaction queries the “Individual Master File” software to determine if an income tax return was filed to match what IRS calls an ‘information return”, which is either a “1099” or similar unsworn document filed by someone, or an entity, claiming to have paid the ”non-filer”.

A **TC 424** is described in Document 6209 as “**Examination Request Indicator**”.

If IMF does not respond to the 424 request initiated in AIMS by indicating a matching return was filed, the employee initiates in AIMS a second transaction known to IRS as an “036 push code”.

Push Code 036 overrides the multiple validity checks built into the **IMF software**. Push code 036 is defined by IRS variously as either “a substitute for return”, or “**using a Push Code 036 will automatically generate a TC150 and TC 420 on Master File**”, [See IRS Document 6209, Section 13-17, (11) “EP AIMS Push Codes”], or is used for a “Non-filer; will computer-generate a substitute for return TC 150 at Master File two cycles after input”. [See AIMS Reference Guide, 4.4.10-14 “Push Codes”.] That means a 424/036 sequenced transaction initiated in AIMS will make the related IMF show the phrase “**SFR 150**”, even when no substitute income tax returns exist to justify entrance of the phrase into an IMF.

From my examination of the IMF records of many victims of IRS fraud, I have learned that, as part of IRS’ concealment of the scheme, the **424/036** transactions typically do not appear in the screen print provided victims known as the “**IMF Transcript Complete**” or “**IMF Transcript Specific**”. But, the initiating sequence of fraudulent transactions **424/036 DO** appear in a screen print known as “**TXMODA**”, the existence of which screen print very few victims know.

TC 424/036 establishes the AIMS account with a “**Ret-Rcvd-Dt**” (Return Received Date), which, for Mr. Schofield, was allegedly August 25, 2011.

Immediately after, and on the same date, the **TC 424/036** was initiated in the AIMS database, a **TC 425** transaction with **Push Code 036** was also entered into the IMF via AIMS. (See **Exh. B, Support Document 2**, known to IRS as an “**IMFOLT**” screen print). I noted that the **425** transaction was entered in combination with the use of **Push Code 036**, which code overrides the security features of the IMF.

I noted that, by causing the sequence of initiating transactions to appear in no single screen print, IRS scatters the evidence of their initializing sequence across the variety of screen prints available to IRS, thus ensuring no typical victim sees how IRS “builds a case” against a “non-filer”.

I noted that recently, after numerous FOIA requests have been utilized in lawsuits to stop the criminal manipulation of IRS’ databases, IRS is now refusing to provide even the IMF screen prints to victims, and instead provides sanitized “**Account Transcripts**” with false information and excised evidence. [See **Support Document 7, pg. 1**] For example, in her July 6, 2016 FOIA response to James Morris, IRS Disclosure Manager Laura A. McIntyre states:

"Treasury Regulation 26 CFR 601.702(d) provides that requests for records processed in accordance with routine agency procedures are specifically excluded from the processing requirements of the Freedom of Information Act and Internal Revenue Code 6103(e)."

As a result, Disclosure offices will no longer process requests for transcripts or other similar information. The part of your request for those documents is not being processed. [See **Support Document 7, pg. 1**]

In other words, the IRS is further concealing its institutionalized record falsification scheme by refusing to provide copies of **IMF Transcript Complete**, **IMF Transcript Specific**, **TXMODA** or **IMFOLT** to Americans who request them, by exercising their rights under the Freedom of Information Act (FOIA).

In Mr. Schofield’s **IMF Transcript Specific** [See **Support Document 1, pgs. 1 & 2**] and **IMFOLT** [See **Support Document 2, pg. 1**], I observed that, after the **TC 424/036** was entered into AIMS on August 25, 2011, two events occurred:

1. a **TC 420** appeared in the IMF eight (8) days later on September 1, 2011. A **420** is described in Document 6209 as “**Examination Indicator**”, but, in reality, it is not a transaction at all, just an auto-generated indicator from AIMS to IMF, showing that a valid account has been established on AIMS after the 424/036 sequence which can receive deficiency amounts claimed by IRS to be owed by a “non-filer”, and that it was an AIMS-initiated transaction which began the sequence; and
2. the phrase **SFR 150** appeared in the IMF nineteen (19) days later on September 12, 2011, indicating a “**Substitute For Return**” (**SFR**) had supposedly been performed, but, nothing whatsoever happened on that date.

Every transaction initiated in the IMF software is automatically accompanied by what IRS calls a **Document Locator Number (DLN)** to ensure control and easy location of all documents related to any given transaction.

The 14-digit DLN assigned to the concealed 424/036 transaction, by which the phrase **SFR 150** was made to appear in the IMF, is **29210-888-00000-1**. [See **Support Document 1, Pg. 1**]

That is, in the falsified Account Transcript, IRS claims a “**Substitute For Return**” (SFR) was created on “09122011”, but the DLN associated with that transaction proves that nothing occurred on that date. The **Document Locator Number (DLN) assigned is 29210-888-00000-1.**

IRS responses to Freedom of Information Act requests for DLN's with high numbers of 8's and 0's, such as DLN "29210-888-00000-1", appearing in the Account Transcript [See Support Document 6, Pg. 2], are “computer generated” numbers and no document exists related to such DLN.

For example: In her September 17, 2013 FOIA response to Robert A. McNeil, IRS Disclosure Manager Klaudia Villegas states *"For Item i, you asked for a copy of the documents identified by several Document Locator Numbers (DLN), for the tax year 2002 through 2009. A document is not created for every DLN shown on a transcript. In situations where taxpayers fail to file required income tax returns a document locator number is assigned to create a module on the Master File. The DLN you requested was generated by our Automated Substitute for Return program. This DLN is computer generated and there is no paper document associated with it. Therefore, there are no documents responsive to your request."* [See Support Document 6, Pg. 2]

Hence, no substitute income tax return was created on either August 25, 2011 (the pretended return received date), or on September 12, 2011, (the pretended date the “SFR 150” was supposedly performed), contrary to repeated fraudulent IRS claims. [See for example Support Document 6, Pg. 2, Second full ¶]

On **Support Document 1, Pg. 2**, I observed that, on April 23, 2012, a transaction numbered “300” was entered on IMF.

A **TC 300** is titled in Document 6209 as “**Additional Tax or Deficiency Assessment by Examination Division or Collection Division.**” It is further described in “Remarks” as “**Assesses additional tax as a result of an Examination or Collection Adjustment to a tax module which contains a TC 150 transaction**”. [See 2011 Document 6209, Section 8-14, pg. 36 of 504]

I am aware, after viewing many IMF records falsified by IRS, that the Service invariably enters claimed “deficiencies” into the IMF records of so-called “non-filers” by using a **TC 300 transaction**, which requires a return to have been previously received. Hence, the use of a TC 300 to enter “deficiency” amounts proves that such transaction is not considered by IRS as a return of any sort.

The 420 account was then closed on April 23, 2012 with a transaction numbered **421**, and the falsified record was complete, ready to be forwarded to Collections or Criminal Investigations, as desired by IRS. [See Support Document 1, Pg. 3]

During my further examination of Mr. Schofield’s records, I reviewed Forms 13496, 4549 and 886-A for 2009. These forms constitute a set of paper documents government attorneys label as a

“Substitute for Return package” (a.k.a. “SFR package”) which the attorneys falsely infer to be a substitute *income tax* return. However, no IRS employees, even those who make such “packages”, ever swear to have prepared a substitute *income tax* return.

Form 13496 is the covering “IRC Section 6020(b) Certification” of a typical “package” [See Support Document 3, pg. 2]; **Form 4549** is an “Income Tax Examination Changes” form where an IRS Examinations Division employee calculates the supposed “deficiency amount” owed by the targeted nontaxpayer [See Support Document 3, pg. 3]; and **Form 886-A** provides an “Explanation of Items” contained in Form 4549 [See Support Document 3, pg. 9]

[Please bear in mind IRS has unarguable authority to prepare “SFRs” in excise, partnership and employment matters, but not in income tax matters, unless a taxpayer elects IRS to prepare one. This explains why Government attorneys never use the full phrase “substitute income tax return”, but always use the misleading acronym “SFR”, which IRS unarguably HAS authority to prepare, but only in regard to employment, excise and partnership tax matters, or upon the election of a taxpayer.]

During my examination of those documents, I observed the following:

Form 13496 “IRC Section 6020(b) Certification [Support Document 3, pg. 2 thru 4]

- The form was prepared for **Billie Schofield, SSN/EIN XXX-XX-9231** for “**Tax Year 200912**”
- The box labeled “**Total pages certified as valid section 6020(b) return**” was blank
- The form states: “*The officer of the IRS identified below, authorized by Delegation Order 182, certifies the attached pages constitute a valid return un section 6020(b).*”
- The form was allegedly prepared and signed by Maureen Green, Operations Manager (Examination) in the Ogden, Utah Service Center
- Her Employee ID is 100009936
- She allegedly prepared the form on October 11, 2011

Based on my examination, I determined this document to be deficient because no pages were certified as valid section 6020(b) return.

Form 4549 “Income Tax Examination Changes” [Support Document 3, pg. 3]

- **Return Form No.** is shown as “**1040**”
- On page 4, the alleged “**Amount due**” for 2009 was calculated to be **\$46,956.88**
- At the bottom of page 4, in the block titled “**Examiner’s Signature:**”, there was no signature. Instead, only the typed words “**Tax Examiner - MS 4388**” appeared
- The “**Employee ID**” block contained the numbers “**100009936**”, matching Ms. Green’s ID on Form 13496
- The form was allegedly prepared in the Ogden, Utah Service Center
- The form was allegedly prepared on October 11, 2011

Based on my examination, I determined this document to be deficient because it was not signed by an authorized IRS officer.

Form 886-A “Explanation of Items” [Support Document 3, pg. 9]

- The form was prepared for **Billie Schofield**, Tax Identification Number **XXX-XX-9231** for “**Year/Period ended 2009**”
- The first sentence of the first paragraph states “*Since you failed to file your tax return(s) for the tax year(s) shown in this report, we have filed for you as authorized by Internal Revenue Code Section 6020(b).*”
- The first sentence of the second paragraph states “*We used Information Return Documents filed by payers as reported under your Social Security Number to determine your income.*”

Based on my examination, I determined this document to be fraudulent because the underlying IMF records [Support Documents 1 and 2] provide contradictory evidence that no substitute income tax return (SFR) is EVER prepared by IRS on any date.

Continuing my review of Mr. Schofield’s 2009 records, I determined that, when the “deficiency amount”, penalties and interest supposedly due were entered/memorialized in the IMF record via “transaction codes” (TC) “300”, “170” and “160” respectively, another IRS employee created a so-called “self-authenticating certification” known as a **Form 4340 “Certificate of Assessments, Payments and Other Specified Matters”**. [See Support Document 4]

As would be expected in a white collar operation directed and approved by attorneys, the person who created the “Certificate” did not identify the person (“Maureen Green”) who computed the alleged “deficiency” amount as part of the “SFR package”. In addition, the date of Green’s work, October 11, 2011, does not appear anywhere on the “Certificate”.

In fact, however, the “Certificate” contains THREE contradictory, incorrect dates, all of which fact-finders will presume to be that on which an SFR was performed by IRS. Looking at the Certificate, the type DoJ presents to courts, Ms. Green’s identity cannot be determined, nor can she be summonsed to testify as to her authority to perform SFRs in income tax matters.

[In criminal prosecutions, the DoJ doesn’t create certifications. Prosecutors, instead, first simply assume, along with juries, that Congress imposed a duty upon all Americans to file and pay income tax. Then, prosecutors use live witnesses reviewing bank records to prove that a taxpayer received the minimum amount the Government claims triggered an income tax liability. The live witness will also testify that no return filed by the targeted victim appeared in IRS records. But, IRS prosecutors ALWAYS conceal and refuse to provide the exculpatory digital and documentary evidence we have uncovered, which, if presented to juries, would defeat the presumption Congress imposed any duty upon “non-filers” to file returns.]

I confirmed this fact, through diligent study of DoJ’s Criminal Tax Manual, where I learned that, in the prosecution of alleged tax crimes, its attorneys are instructed to conceal the exculpatory IMF evidence, as follows:

"The introduction of the actual Individual Master File (IMF) transcript of account through a witness can open the witness to cross-examination by the defense about every code and data item contained in the transcript. **In order to avoid this problem, it may be wiser** to offer IRS computer records at trial in the form of Certificates of Assessments and Payments (IRS Forms 4340) or Certificate of Lack of Record (IRS Forms 3050), which are certified documents that summarize specific information regarding a taxpayer's filings and payment history." (Emph. Added) [DoJ Criminal Tax Manual, Chapter 40.03(9)(c) Admissibility of IRS Computer Records, pg. 35]

Link: <https://www.justice.gov/tax/page/file/477071/download>

Unless a victim can PROVE the Certificate is falsified, the "presumption of regularity" controls. The attorneys involved will simply say "The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they properly discharged their official duties." See *U.S. V. Dixon*, 672 F.Supp. 502, 508. Dist. Court, MD Alabama 1987. Now, victims CAN defeat that presumption.

IRS deliberately "uses" the "fruit" from its falsified records to justify forfeitures, seizures, liens, levies, etc., in violation of 18 U.S.C. §1001, which proscribes both the falsification of federal records, and any "knowing use" of falsified records.

I observed this criminal activity in Mr. Schofield's records when I examined IRS' "**Form 668-B Levy**". [See Support Document 5] On that form, IRS claimed he has a 2009 tax liability of \$61,852.22, as of "01/31/2017". The form originated from IRS Territory Office "**N. Atlantic – New Jersey 1**" and appeared to have been signed by Revenue Officer Patrick Dillon on February 8, 2017. There was also a concurring signature from David S. Smith, Group Manager, who also appeared to have signed it on February 8, 2017.

The form states "*The amounts shown above are now due, owing and unpaid to the United States for the above taxpayer for internal revenue taxes. Notice and demand have been made for payment. Chapter 64 of the Internal Revenue Code authorizes collection of taxes by levy on all property or rights to property of a taxpayer, except property that is exempt under section 6334.*

Therefore, under the provisions of Code section 6331, so much of the property or rights to property, either real or personal, as may be necessary to pay the unpaid balance of assessment shown, with additions provided by law, including fees, costs, and expenses of this levy, are levied on to pay the taxes and additions."

CONCLUSION

Based on my review of the documents, I have concluded the following:

- A. The Commissioner of IRS circumvents his conceded lack of authority to perform Substitute income tax returns by making his records appear that he performed them.
- B. For so-called "non-filers", IRS creates the false appearance of "deficiencies" only after falsifying both its internal and external records to make it appear a substitute income tax return was executed by IRS on claimed dates, when nothing happened on those dates except criminal manipulations of IRS' related AIMS and IMF databases.
- C. The creation of pretended deficiencies simultaneously creates, by fraud, the appearance of a duty to file, thereby, providing IRS colorable authority to enforce collection/criminal prosecutions;
- D. Without deficiencies created by fraud, involving IRS software and falsified documentary evidence, there would be no willful failure to file a return, and;
- E. Since Congress cannot authorize commission of criminal acts in the enforcement of laws, I have determined that the systemic fraud I have documented herein, occurring in the records of IRS, concerning "non-filers", is clear and convincing evidence that Congress did not, in fact, impose any duty upon Americans to file income tax returns.

UNDER PENALTY OF PERJURY, I DECLARE THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.



Robert A. McNeil

May 28, 2019

Date